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COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 327th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 8 May 1998, at 3 p.m.

Chairman: Mr. BURNS

later: Mr. CAMARA

later: Mr. BURNS

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.327/Add.1).

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of New Zealand (continued) (CAT/C/29/Add.4)

1. At the invitation of the Chairman, the delegation of New Zealand resumed their places at the Committee table.

2. Mr. Camara, Vice-Chairman, took the Chair.

3. Mr. FARRELL (New Zealand) thanked the Committee for its positive response to the second periodic report of New Zealand. Any questions that remained unanswered would be dealt with in writing as soon as possible.

4. Mr. COYLES (New Zealand), referring to the Mangaroa Prison inquiry, said that the police had carried out an extensive investigation into allegations of misconduct by the prison staff. After their files had been referred to the Solicitor-General it had been decided that criminal prosecutions would not be undertaken. However, the Department of Corrections had taken internal disciplinary action against certain prison officers: two had been dismissed, four had resigned and seven had been transferred to other prisons. Four officers had gone back to work at Mangaroa. Since the investigation, significant changes had taken place in the management, staff and organizational culture of Mangaroa prison. The new projects implemented included the establishment of a Maori Focus unit that tried to give Maori inmates more access to their culture, language and tribal protocols. Leaders of the local Maori community had access to Maori inmates. Initial reports suggested that the unit was working well.

5. The national prison population was about 5,500. Maori accounted for about 12 per cent of the general population of New Zealand but 48 per cent of the prison population, while Pacific Island peoples made up about 6 per cent of the prison population.

6. Ms. HOLMES (New Zealand) said that for committal to a psychiatric hospital a person must be found to be "mentally disordered" as defined in the Mental Health (Compulsory Assessment and Treatment) Act. The procedures for committing people to compulsory psychiatric care were set out in the Act in great detail. In brief, following an application for a compulsory treatment order, an initial assessment was carried out by a medical practitioner who was normally a psychiatrist. If there were reasonable grounds for believing that the person was mentally disordered, there would be a further assessment for five days. If, after that, it was still felt that the person was mentally disordered a second period of assessment for a further 14 days was ordered. At the end of the second period of assessment, the responsible clinician, if he or she felt it was necessary, could apply to the court for a compulsory treatment order. The judge usually went to the hospital to deal with such applications. The patient could be present at the hearing and speak in person

or through a lawyer. Legal aid was available. If an order was made, the responsible clinician must review the patient's condition after three months and thereafter at intervals of no longer than six months. If found at any time not to be mentally disordered, the person must be released.

7. On the question of the use of electro-convulsive therapy an informed response in writing would be provided.

8. Turning to the question on the detention of young persons in secure units for up to 72 hours, she said that paragraph 14 of the report (CAT/C/29/Add.4) did not describe a situation that was analogous to police detention; it referred to the management of children who had been placed in a residence established by the Director-General of Social Welfare. They could be placed in such residences for a variety of reasons, for example to remove them from situations in which they were considered to be in danger. Usually, children living in such residences were not detained but were kept in as normal an environment as possible. However, where their behaviour was a threat to themselves or to others or where there were grounds for believing that they might abscond, for example, they could be admitted to a secure unit. The law provided for safeguards against the abuse of those powers. Children who had been arrested for suspected criminal activity enjoyed all the procedural rights that applied to adults.

9. The case of Simpson v. Attorney-General concerned an appeal against High Court orders striking out the plaintiff's causes of action against the police for what had been considered an unreasonable search of a house. The plaintiff had alleged that the police had breached section 21 of the Bill of Rights Act 1990 by carrying out the search. The proceedings had been brought against the Attorney-General, not the individual officers concerned. While the usual remedy for a breach of section 21 would be the exclusion of evidence obtained in the course of the search, that was not an appropriate remedy in the case concerned because the plaintiff was innocent of any wrongdoing. It had therefore been held that monetary compensation could be awarded for the breach of the Bill of Rights Act. It had also been held that an action for compensation was not a private law action, but a public law action against the State, for which the State was primarily responsible.

10. Ms. GEELS (New Zealand) said that refugees fell into two categories, namely those that were accepted under the New Zealand Refugee Quota Programme, and asylum seekers. New Zealand accepted some 700 to 800 refugees for resettlement each year under the Quota Programme. In the late 1970s and 1980s, refugees from Kampuchea, Viet Nam and Laos had accounted for most of the quota. More recently, an increasingly global focus had been adopted, which had led to new refugee communities from Somalia, Ethiopia, Iraq, and Bosnia and Herzegovina. Small numbers of refugees came from other countries such as Burundi, Sudan, Sri Lanka and Poland.

11. Information regarding specific forms of post-traumatic stress disorders among refugees was not available, but every effort would be taken to provide it in writing at a later date. It was hoped that the establishment of the new

"refugees as survivors" centres would allow New Zealand to provide better and more specialized assistance to meet the needs of refugees and help them settle.

12. Mr. COYLES (New Zealand) said that information on the competences of prison officers would be provided in writing.

13. The term "health consumer" meant a person receiving health and disability services and health-care procedures. Health consumers enjoyed protection under a legal Code of Health and Disability Consumers' Rights. The Code covered: provisions to ensure that health-care procedures were not carried out without informed consent; the question of privacy; the obligations of health-care providers to maintain appropriate standards; complaint procedures; and ensuring that health care respected the dignity and independence of the individual.

14. The delegation of New Zealand withdrew.

The public part of the meeting was suspended at 3.20 p.m. and resumed at 4.10 p.m.

15. At the invitation of the Chairman, the delegation of New Zealand resumed their places at the Committee table.

16. The CHAIRMAN invited the Rapporteur for New Zealand to read out the conclusions and recommendations adopted by the Committee on the second periodic report of New Zealand.

17. Mr. YAKOVLEV (Rapporteur for New Zealand) read out the following text, in English:

"The Committee considered the second periodic report of New Zealand (CAT/C/29/Add.4) at its 326th and 327th meetings, held on 8 May 1998 (CAT/C/SR.326 and 327), and has adopted the following conclusions and recommendations:

A. Introduction

New Zealand signed the Convention, ratified it on 10 December 1989 and made declarations recognizing the competence of the Committee against Torture to receive and consider communications made in accordance with articles 21 and 22 of the Convention. Both the initial report which was presented by New Zealand on 29 July 1992 and the second periodic report were prepared in accordance with article 19 of the Convention and with the general guidelines concerning the form and content of reports. The second periodic report of New Zealand covers the period from 9 January 1991 to 8 January 1995 and reflects some significant changes in the legislative and executive activity. Important information is included also in the basic document prepared by New Zealand on 28 September 1993 (HRI/CORE/1/Add.33).

B. Positive aspects

1. Section 9 of the New Zealand Bill of Rights recognizes the right of persons not to be subjected to torture or to cruel, degrading or disproportionately severe treatment or punishment.

2. The Crimes of Torture Act 1989 has specific and directly enforceable provisions to prohibit acts of torture. The definition of 'act of torture' in this Act is in accordance with the relevant definition in article 1 of the Convention.

3. As is stated in the second periodic report, the procedures for considering refugee applications are implemented at present not by part-time staff, but by regular staff.

4. The Committee is satisfied that the periodic review of the clinical status of mental patients committed to mental hospitals ensures that such compulsory treatment will not violate the mental patients' right to freedom.

5. The prohibitions against torture as contained in the Crimes of Torture Act are now specifically included in the training manuals of prison officers.

6. The establishment of 'refugees as survivors' centres.

C. Subjects of concern

1. As a subject of concern, the Committee considers the instances of use of physical violence against prisoners at Mangaroa prison by members of the prison personnel. The allegations are that the prisoners were molested by the guards with fists and legs, were not provided with medical treatment and were deprived of food and proper places of detention.

2. Although, pending the results of the ongoing investigation, these facts cannot be considered as instances of torture, they already amount to cruel and degrading treatment.

D. Recommendations

1. The Committee recommends the completion of the investigation of the Mangaroa prison incidents of physical violence against prisoners. The State party should inform the Committee of the results.

2. The Committee considers it important to strengthen the supervision of prisons to prevent misuse and abuse of power by prison personnel.

3. The Committee considers it desirable to continue efforts to adopt the new law on extradition which would simplify the extradition procedure, permitting the relevant relations thus to be established with the non-Commonwealth countries on the basis of a treaty or without it."

18. Mr. FARRELL (New Zealand) said his delegation had listened with interest to the Committee's conclusions and recommendations and would study them closely. He thanked the Committee for the interest shown in the second periodic report of New Zealand and appreciated the spirit in which the proceedings had been conducted and developments in the State party noted. In the light of the concluding observations, his Government would add any further information that the Committee requested or that it felt would be useful.

19. The delegation of New Zealand withdrew.

The public part of the meeting was suspended at 4.10 p.m. and resumed at 4.15 p.m.

20. Mr. Burns took the Chair.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Announcement of accession by Bahrain to the Convention

21. The CHAIRMAN announced that Bahrain had acceded to the Convention, although it had made reservations to articles 20 and 30. That brought the total number of States parties to 105.

Country Rapporteurs

22. The CHAIRMAN invited offers from members to serve as country rapporteurs and alternate country rapporteurs for the twenty-first session.

23. Mr. El Masry and Mr. Camara agreed to serve as Country Rapporteur and Alternate Country Rapporteur for the second periodic report of Tunisia.

24. Mr. Yakovlev and Mr. Zupančič agreed to serve as Country Rapporteur and Alternate Country Rapporteur for the initial report of Yugoslavia.

25. Mr. Sørensen and Mr. Mavrommatis agreed to serve as Country Rapporteur and Alternate Country Rapporteur for the initial report of Iceland.

26. Mr. Silva Henriques Gaspar and Mr. Zupančič agreed to serve as Country Rapporteur and Alternate Country Rapporteur for the second periodic report of Croatia.

27. Mr. Burns and Mr. Sørensen agreed to serve as Country Rapporteur and Alternate Country Rapporteur for the third periodic report of the United Kingdom.

28. Mr. Mavrommatis and Mr. Yu agreed to serve as Country Rapporteur and Alternate Country Rapporteur for the third periodic report of Hungary.

29. Mr. MAVROMMATIS asked whether the States parties were aware in advance of who the country rapporteurs were, and if so why; the Human Rights Committee, for example, did not divulge the names of its rapporteurs.

30. The CHAIRMAN asked why the names should not be known in advance.

31. Mr. BRUNI (Secretary of the Committee) said that the Human Rights Committee had discussed that issue at length and had found it uncomfortable for rapporteurs to have their names disclosed to the States parties in advance of consideration of their reports. The Committee on the Elimination of Racial Discrimination, however, took quite the opposite view: not only were the names of its rapporteurs made public, but they were printed in committee documents. In previous discussions on the matter in the Committee against Torture, it had been argued that a good reason for making the names of rapporteurs known was that they would then be seen as a reference for all concerned, particularly for non-governmental organizations (NGOs), which would then often communicate the rapporteurs' names to medical centres, lawyers' associations, associations of families of prisoners and other groups which had information closer to the source. If there was no named rapporteur who could be approached and given information by such groups, dialogue was more difficult. The position eventually adopted by the Committee had been taken as a sort of compromise, making its approach neither too formal nor confidential.

32. The CHAIRMAN said that in the 10 years of the Committee's existence, no member had ever to his knowledge been coerced, threatened, intimidated or otherwise harassed by States parties' delegations or NGOs. He saw no compelling reason to change the current practice.

The public part of the meeting rose at 4.25 p.m.